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12 IN THE UNITED STATES DISTRICT COURT FOR THE
13 EASTERN DISTRICT OF WASHINGTON

14 UNITED STATES OF AMERICA,

15 Plaintiff,

16 v.

17 SAMI ANWAR,

18 Defendant.

CASE NO. 4:18-CR-06054-EFS-1

EMERGENCY MOTION FOR COMPASSIONATE
RELEASE (COVID-19); MEMORANDUM OF
POINTS & AUTHORITIES IN SUPPORT

COURT: Hon. Edward F. Shea

20 **Defendant Sami Anwar's**
21 **Emergency Motion for Compassionate Release (COVID-19)**
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TABLE OF AUTHORITIES**Cases**

<i>Halgren v. City of Naperville</i> , No. 21-cv-05039, 2021 U.S. Dist. LEXIS 241777, *9-12 (N.D. Ill.)	19
<i>Ruderman v. Kolutwenzew</i> , No. 20-cv-2082, 2020 U.S. Dist. LEXIS 83163, *5-6 (C.D. Ill. May 12, 2020)	12
<i>Stirling v. BOP, et al.</i> , 3:20-cv-00712-SB (D. Or. Aug. 13, 2021).....	26
<i>Stirling v. BOP, et al.</i> , 3:20-cv-00712-SB (D. Or. Oct. 20, 2020).....	6
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<i>United States v. Bryant</i> , 996 F.3d 1243, 1265 n.1 (11th Dist. May 7, 2021)	9
<i>United States v. Fields</i> , No. 12-cr-20274, 2020 U.S. Dist. LEXIS 229692, 2020 WL 7225775 (E.D. Mich. Dec. 8, 2020)	30
<i>United States v. Garlock</i> , No. 18-cr-00418, 2020 U.S. Dist. LEXIS 53747, *1-*2, 2020 WL 1439980 (N.D. Cal. Mar. 25, 2020)	29
<i>United States v. Holden</i> , No. 2:16-cr-9, 2020 U.S. Dist. LEXIS 205520, *4 (N.D. Ga. Aug. 18, 2020).....	31
<i>United States v. Huang</i> , No. 19-cr-00110, 2020 U.S. Dist. LEXIS 58355, *1-*2, 2020 WL 1540483 (N.D. Cal. Mar. 27, 2020)	29
<i>United States v. Jacques</i> , No. 16-20759, 2021 U.S. Dist. LEXIS 146709, 2021 WL 3422356 (E.D. Mich. Aug. 5, 2021).....	30
<i>United States v. Keller</i> , 2 F.4th 1278, 1281 (9th Cir. 2021)	9
<i>United States v. Magnuson</i> , 15-cr-50095, 2020 U.S. Dist. LEXIS 233817, 2020 WL 7318109 (D.S.D. Dec. 11, 2020)	30
<i>United States v. Miller</i> , No. 17-cr-404, 2020 U.S. Dist. LEXIS 241244, 2020 WL 7641289 (N.D. Ill. Dec. 22, 2020).....	30
<i>United States v. Murry</i> , No. 1:15-cr-00153, 2021 U.S. Dist. LEXIS 38121, *15, 2021 WL 795451 (S.D. Ind. Mar. 2, 2021).....	10
<i>United States v. Powell</i> , No. 19-cr-00061, 2020 U.S. Dist. LEXIS 62077, *1-*2, 2020 WL 1540485 (N.D. Cal. Mar. 27, 2020)	29
<i>United States v. Raymonde</i> , No. 11-cr-000490, 2021 U.S. Dist. LEXIS 208092, 2021 WL 5014499 (D. Colo Oct. 28, 2021)	30
<i>United States v. Wheelock</i> , No. 13-136, 2021 U.S. Dist. LEXIS 99684, 2021 WL 2143136 (D. Minn. May 26, 2021).....	30

Statutes

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------------------------	------

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5	21 U.S.C. § 843.....	8, 9
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Other Authorities

8	“Tracking Coronavirus: Yamhill County, Ore.,” NY Times, updated Apr. 3, 2021.....	27
9	Alexander Tin, <i>South Africa Investigates "Sharp Increase" in Hospitalized Children with COVID</i> , CBS News, Dec. 3, 2021	17
10	Annabelle Timsit and Lateshia Beachum, <i>Unvaccinated Houston Man's Death May be First Attributed to Omicron in U.S.</i> , Wash. Post, Dec. 21, 2021.....	18
11	Antony Sguazzin, <i>J&J Shot Loses Antibody Protection Against Omicron in Study</i> , Bloomberg, Dec. 15, 2021	18
12	Apoorva Mandavilli, NY Times, “Reaching ‘Herd Immunity’ Is Unlikely in the U.S., Experts Now Believe,” May 3, 2021	14
13	Apoorva Mandavilli, <i>Omicron Variant Spreading Twice as Quickly as Delta in South Africa</i> , NY Times, Dec. 3, 2021	16
14	Assistant Director for Correctional Programs Division Andre Matevousian’s memorandum issued on April 13, 2021	22
15	Attorney General Barr’s memoranda issued on March 25, 2020, and April 3, 2020.....	22
16	BOP, <i>COVID-19 Coronavirus</i> , “Coronavirus Vaccine Implementation,”	21
17	BOP, <i>Inmate Age</i>	21
18	Caitlyn Owens, <i>Biden Official Warns: COVID Explosion Imminent</i> , Axios, Dec. 14, 2021.....	16
19	Carolyn Y. Johnson, <i>Pfizer’s Anti-Covid Pill Prevents Severe Illness and Should Work against Omicron</i> , Company Says, Wash. Post, Dec. 14, 2021.....	17
20	CDC, Media Statement, <i>CDC Recommends Additional Boosters for Certain Individuals</i>	18, 21
21	CDC, <i>Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory</i>	14

1	David Knowles, <i>Fauci: 'Dangerous' to Assume Omicron's Apparent Mildness Means the End of the Pandemic is in Sight</i> , Yahoo News, Dec. 22, 2021	17
2		
3	Eddie Burkhalter, et al., <i>Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System</i> (Apr. 10, 2021)	16
4	Emily Anthes, <i>Delta, As Expected, is Now the Dominant Virus Variant in the U.S., the C.D.C. Estimates</i> , NY Times, July 14, 2021	16
5		
6	<i>Federal Bureau of Prisons Clinical Guidance</i> at 1, Oct. 13, 2021	21
7	GAO, <i>BOP Could Further Enhance its COVID19 Response by Capturing and Incorporating Lessons Learned</i> 23 (July 2021)	25
8	Gretchen Vogel, <i>COVID-19 Reinfection Study from South Africa Yields Ominous Data About Omicron</i> , Science, Dec. 4, 2021	16
9		
10	Hilary Brueck and Shayanne Gal, <i>Rapid Tests Do Not Always Detect Omicron — Here's How to Know for Sure If You've Got COVID-19 or Not</i> , BusinessInsider, Dec. 23, 2021	20
11		
12	Jake Ellison, <i>COVID-19: UW Study Reports 'Staggering' Death Rate in US Among Those Infected Who Show Symptoms</i> , UW News (May 18, 2020)	15
13		
14	Joe Hilton, et al., <i>Estimation of country-level basic reproductive ratios for novel Coronavirus (SARS-CoV-2/COVID-19) using synthetic contact matrices</i> , 16(7) PLoS Comput. Biol. (July 2020)	15
15		
16	Joseph Guzman, <i>New Study Finds Coronavirus Can Cut Life Span by 10 Years or More</i> , The Hill, May 11, 2020	15
17	Kathryn Krawczyk, <i>The Week, Even Mild Coronavirus Cases Can Cause Lasting Cardiovascular Damage, Study Shows</i> (July 28, 2020)	15
18		
19	Kent Sepkowitz, <i>Omicron is a Game-Changer for Covid-19 Vaccines</i> , CNN, Dec. 24, 2021	16
20	Lena H. Sun, et al., <i>Omicron spreading rapidly in U.S. and could bring punishing wave as soon as January</i> , CDC warns, Wash. Post, Dec. 14, 2021	17
21		
22	Liesl M. Hagan, MPH, et al., "Outbreak of SARS-CoV-2 B.1.617.2 (Delta) Variant Infections Among Incarcerated Persons in a Federal Prison — Texas, July–August 2021," CDC, MMWR, September 24, 2021 / 70(38);1349–1354	26
23		
24		
25	Lisa B. Puglisi, M.D., et al., <i>Estimation of COVID-19 Basic Reproduction Ration in a Large Urban Jail in the United States</i> , 53 Ann. Epidemiol. 103-105 (Jan. 2021)	15
26		
27	Ludwig Berger & Michael Erman, <i>Pfizer, BioNTech Vaccine Neutralises Omicron with Three Shots</i> , Reuters, Dec. 8, 2021	18
28	Maggie Fox, <i>Studies Confirm Waning Immunity from Pfizer's Covid-19 Vaccine</i> , CNN, Oct. 7, 2021	21

1	<i>Miguel Escalante, et al. v. U.S. Immigration and Customs Enforcement, et al.</i> , 1:22-cv-00541-RJL (D.D.C. March 1, 2022)	19
2	Mike Stobbe, <i>Omicron Sweeps Across Nation, Now 73% of New US COVID Cases</i> , AP, Dec. 21, 2021	18
3		
4	<i>Moderna CEO Says Vaccines Likely Less Effective Against Omicron</i> , Reuters, Nov. 30, 2021	17
5	Nancy Lapid, <i>Vaccines Appear Weak at Blocking Omicron, Better Against Severe Disease</i> , Reuters, Dec. 14, 2021.....	18
6		
7	Nathan Jeffay, <i>Israeli Study Finds 2 Pfizer Shots Fail to Neutralize Omicron, but Booster Effective</i> , The Times of Israel, Dec. 12, 2021	18
8	Ofc. of Insp. Gen., Dep't of Justice, <i>Review of the Federal Bureau of Prisons' Medical Staffing Challenges i-ii</i> (Mar. 2016)	31
9		
10	Ofc. of Insp. Gen., Dep't of Justice, <i>The Impact of an Aging Inmate Population on the Federal Bureau of Prisons i</i> (Rev. Feb. 2016).....	31
11	Program Statement 5050.50, <i>Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)</i>	22
12		
13	<i>Reinfections Three Times More Likely with Omicron: S. African Research</i> , AFP, Dec. 2, 2021	17
14		
15	Robert Towey, <i>NIH Director Urges Vaccinated Americans to Get Covid Booster Shots to Curb Breakthrough Infections Over Holidays</i> , CNBC, Nov. 9, 2021.....	21
16		
17	Statement of Michael E. Horowitz, Inspector General, U.S. Dept. of Justice before the U.S Sentencing Commission at 3 (Feb. 17, 2016).....	13
18	<i>Study: Omicron could be more transmissible due to sharing genetic material with common cold</i> , Yahoo News, Dec. 4, 2021	17
19		
20	Thomas R. Frieden, former Dir. of the CDC, The Atlantic, <i>COVID-19 Is Out Of Control. What Can We Do About It?</i> (Nov. 13, 2020)	14
21	<i>Tracking COVID-19 Variant Omicron</i> , BNO News.....	16
22	U.S. Dep't of Justice, Ofc. of Insp. Gen., <i>Pandemic Response Oversight-- Dashboards of COVID-19 Cases</i>	26
23		
24	U.S. Probation Monograph	34
25	U.S. Sentencing Comm'n, <i>Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic 2</i> (Mar. 2022).....	13
26	U.S. Sentencing Comm'n, <i>The First Step Act of 2018—One Year of Implementation</i> at 47 (Aug. 2020).....	12
27		
28	U.S. Sentencing Commission, <i>Compassionate Release Data Report</i> tbl. 1 (Sept. 2021).....	23

1	U.S. Sentencing Commission’s <i>2021 Sourcebook on Federal Sentencing Statistics</i>	28
2	USA Facts, <i>US Coronavirus Vaccine Tracker</i>	14
3	Walter Pavlo, Forbes, <i>Bureau of Prisons Begins Implementing First Step Act with Release Of Thousands In Custody</i> , Jan. 22, 2022	22
4		
5	World Health Organization, <i>COVID-19 Weekly Epidemiological Update</i> , Mar. 29, 2022	20
6	World Health Organization, <i>Update on Omicron</i> , Nov. 28, 2021	16
7	Worldometer, <i>COVID-19 Coronavirus Pandemic</i>	14
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EMERGENCY MOTION FOR COMPASSIONATE
RELEASE (COVID-19); MEMORANDUM OF
POINTS & AUTHORITIES IN SUPPORT

COURT: Hon. Edward F. Shea

21 Defendant SAMI ANWAR, by and through undersigned counsel, and with more than 30 days
22 having elapsed since he requested compassionate release from the Bureau of Prisons (“BOP”), hereby
23 moves this honorable Court for compassionate release pursuant to 18 U.S.C. § 3582 (c)(1)(A)(i) in light
24 of the extraordinary and compelling circumstances presented by the current pandemic including the
25 recent Omicron Variant and subvariants of SARS-CoV-2, his age (43), the fact he is suffering from,
26 among other things, **thyroid cancer**, and that he remains unvaccinated against COVID-19 despite
27 repeated requests. As U.S. District Judge Michael H. Simon found during a civil class action hearing
28 brought by inmates against the warden of FCI Sheridan, “inmates are being incarcerated [at FCI

1 Sheridan] under conditions that pose a substantial risk of serious harm, given the COVID-19 virus in our
2 community, including in our prison. I think that virus creates a substantial risk of serious harm. Among
3 other things, it can lead to serious health effects all the way leading to death.” *Stirling v. BOP, et al.*,
4 3:20-cv-00712-SB (D. Or. Oct. 20, 2020) (Doc. 44 at 34-35).

5 Mr. Anwar prays that the imprisonment portion of his sentence be reduced to time-served so that
6 he may begin serving his three-year term of supervised release, which this Court may condition on a
7 term of home confinement. In the alternative, Mr. Anwar asks that the Court recommend to the BOP
8 that he be transferred to home confinement at the earliest possible opportunity consistent with BOP
9 regulations, *see* 18 U.S.C. § 3621(b)(4). In support thereof, Mr. Anwar provides this honorable Court
10 with the attached Memorandum of Points and Authorities.

11
12 Dated: April 4, 2022.

ALAN ELLIS

13
14 /s/ ALAN ELLIS

ALAN ELLIS

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16 JEFFRY K. FINER

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18 /s/ Jeffry K. Finer

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MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT

I. PERTINENT BACKGROUND AND PROCEDURAL HISTORY

Mr. Anwar (Reg. No. 21140-085) is a 43-year-old Asian male with a history of he has papillary thyroid cancer, type 2 diabetes mellitus, a history of at least one documented panic attack and anxiety disorder, and recurrent headaches. *See* Ex. 1 (Letter from Dr. Thomas E. McNalley). According to the CDC, Mr. Anwar is at least twice as likely to be hospitalized and 10 times more likely to die from COVID-19 than those 18 to 29 years of age.¹ Once he turns 50, his risk for hospitalization increases by 50% from two to three times more likely, and more than doubles for death from 10 to 25 times more likely.²

On November 7, 2018, the grand jury for the Eastern District of Washington returned a 47-count indictment, in which Sami Anwar, Mid-Columbia Research, LLC, and Zain Research, LLC were charged with (count 1) Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. § 1349; (count 2) Conspiracy to Commit Mail Fraud, in violation of 18 U.S.C. § 1359; (counts 3-25) Wire Fraud, in violation of 18 U.S.C. § 1343; (counts 26-40) Mail Fraud, in violation of 18 U.S.C. § 1341; (counts 41-46) Fraudulently Obtaining Controlled Substances, in violation of 21 U.S.C. § 843(a)(3); and (count 47) Furnishing False or Fraudulent Material Information, in violation of 21 U.S.C. § 843(a)(4)(A). This indictment also included a forfeiture allegation.

In response to the indictment, the Court issued a warrant for Mr. Anwar's arrest. On November 8, 2018, Mr. Anwar was arrested and appeared before a U.S. Magistrate Judge in Spokane, Washington, at which time he entered a plea of not guilty. He has been in continuous custody since his arrest.

On February 5, 2019, a 47-count superseding indictment was filed, in which the above-noted defendants were charged with the same counts alleged in the original indictment. The primary change in the superseding indictment was that the date of relevant conduct had changed, alleging the defendant had engaged in these offenses prior to the date alleged in the November 7, 2018, indictment.

On November 22, 2019, Mr. Anwar was found guilty by jury trial of all 47 counts of the superseding indictment. Count 1 charged Conspiracy to Commit Wire Fraud, in violation of 18 U.S.C. §

¹ <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/investigations-discovery/hospitalization-death-by-age.html>

² *Id.*

1 1349; count 2 charged Conspiracy to Commit Mail Fraud, in violation of 18 U.S.C. § 1349; counts 3-25
 2 charged Wire Fraud, in violation of 18 U.S.C. § 1343; counts 26-40 charged Mail Fraud, in violation of
 3 18 U.S.C. § 1341; counts 41-46 charged Fraudulently Obtaining Controlled Substances, in violation of
 4 21 U.S.C. § 843(a)(3); and count 47 charged Furnishing False or Fraudulent Material Information, in
 5 violation of 21 U.S.C. § 843(a)(4)(A).

6 On October 1, 2020, after a two-day sentencing hearing, this Court calculated Mr. Anwar's Total
 7 Offense Level under USSG §2B1.1 to be 40 (inclusive of a one-level upward departure) and his
 8 Criminal History Category to be I (with zero criminal history points) for a sentence range of 292 to 365
 9 months. *See* Sentencing Trans. at 297-299 (Doc. 281; PageID 7086-7088). This Court then imposed a
 10 sentence of 340 months, three years' supervised release, and \$1,890,550.10 in restitution. *See id.*

11 According to the BOP's online "Inmate Locator," Mr. Anwar is currently serving his sentence at
 12 FCI Sheridan and has an estimated release date of December 30, 2042. As of April 18, 2022, Mr.
 13 Anwar will have served 41 months of imprisonment, which is equivalent to a sentence of over 48
 14 months of imprisonment when factoring in the customary 15% reduction for Good Conduct Time credit.

16 **II. LEGAL AUTHORITY GOVERNING COMPASSIONATE RELEASE**

17 ***A. Exhaustion***

18 Section 3582(c)(1)(A) of Title 18 of the U.S. Code provides in pertinent part that,

19 the court, upon motion of the . . . defendant after the defendant has fully
 20 exhausted all administrative rights to appeal a failure of the Bureau of
 21 Prisons to bring a motion on the defendant's behalf or the lapse of 30 days
 22 from the receipt of such a request by the warden of the defendant's facility,
 23 whichever is earlier, may reduce the term of imprisonment (and may impose
 24 a term of probation or supervised release with or without conditions that
 25 does not exceed the unserved portion of the original term of imprisonment),
 after considering the factors set forth in section 3553(a) to the extent that
 they are applicable, if it finds that. . . extraordinary and compelling reasons
 warrant such a reduction . . . and that such a reduction is consistent with
 applicable policy statements issued by the Sentencing Commission."

26 Per the plain language of the statute, this Court has jurisdiction to consider the instant motion
 27 inasmuch as more than 30 days have lapsed since Mr. Anwar first made his request for compassionate
 28 release to the Warden at FCI Sheridan on December 17, 2021. *See* Ex. 2; *United States v. Keller*, 2

1 F.4th 1278, 1281 (9th Cir. 2021) (“a court may not consider a motion brought under § 3582(c)(1)(A)
 2 unless (1) the Director of the BOP has filed the motion on the inmate’s behalf, or (2) the inmate has
 3 requested that the BOP make such a motion and either (a) the inmate has ‘fully exhausted all
 4 administrative rights to appeal a failure of the [BOP] to bring a motion on the [inmate]’s behalf,’ or (b)
 5 30 days have elapsed since the ‘warden of the [inmate]’s facility’ received a compassionate-release
 6 request from the inmate.”).

7 This Court therefore has jurisdiction to entertain the instant motion and consider it on its merits.

8 ***B. Section 1B1.13 of the U.S. Sentencing Guidelines Does Not Preclude Relief***

9 The pertinent policy statement of the Sentencing Commission pertaining to compassionate
 10 release motions is found at USSG §1B1.13. However, that policy statement recapitulates an earlier
 11 version of 18 U.S.C. § 3582, which, by its terms, applies **only to the “Director of the Bureau of**
 12 **Prisons.”** USSG §1B1.13 (emphasis added). Thus, it does not contemplate—nor could it have—the
 13 subsequent and substantive change to 18 U.S.C. § 3582(c)(1)(A) made on December 21, 2018 by the
 14 First Step Act, **which for the first time provided an inmate with the right to move a court for**
 15 **compassionate release.** Indeed, even the U.S. Sentencing Commission itself recognizes that “the policy
 16 statement at §1B1.13 does not reflect the First Step Act’s changes.” U.S. Sentencing Comm’n, *The First*
 17 *Step Act of 2018—One Year of Implementation* at 47 (Aug. 2020) available at
 18 [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf)
 19 [publications/2020/20200831_First-Step-Report.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2020/20200831_First-Step-Report.pdf).

20 Moreover, the Commission clearly intended for compassionate release motions to be brought and
 21 granted more frequently. *See* USSG §1B1.13, comment. (n.4) (“encourage[ing]” the Director to file such
 22 motions whenever warranted); USSG App. C, Amend. 799 (effective Nov. 1, 2016) (“the new
 23 commentary [to USSG §1B1.13] is intended to **encourage** the Director of the Bureau of Prisons to
 24 exercise his or his authority to file a motion under section 3582(c)(1)(A) when the criteria in this policy
 25 statement are met”) (emphasis added). As set forth in its Reason for Amendment to Amendment 799,
 26 the last substantive time the Commission was able to address this policy statement,³ the Commission

27
 28 ³ The Commission has been without a quorum since December 13, 2018, for which it could
 address the changes brought about by the First Step Act that was enacted on December 21, 2018. *See*
United States v. Bryant, 996 F.3d 1243, 1265 n.1 (11th Cir. May 7, 2021) (Martin, J., dissenting).

1 elicited “testimony from witnesses and experts about the need to broaden the criteria for eligibility, to
 2 add guidance to the medical criteria, and to remove other administrative hurdles that limit the
 3 availability of compassionate release for otherwise eligible defendants.” USSG App. C, Amend. 799
 4 (effective Nov. 1, 2016).

5 Indeed, in testimony before the U.S. Sentencing’s 2016 hearing on “Compassionate Release and
 6 the Conditions of Supervision,” Michael Horowitz, the Inspector General for the U.S. Department of
 7 Justice, discussed two IG reports that “found serious issues with how the Department was running [the
 8 compassionate release] program and concluded that an efficiently-run compassionate release program
 9 combined with modifications to the program’s eligibility criteria could expand the pool of eligible
 10 candidates, reduce overcrowding in the federal prison system, and result in cost savings for the BOP.”⁴

11 Finally, the U.S. Court of Appeals for this Circuit has held that USSG §1B1.13 is not controlling
 12 on district courts. *See United States v. Aruda*, 993 F.3d 797, 802 (9th Cir. 2021) (“Because the district
 13 court treated U.S.S.G. § 1B1.13 as binding, we vacate and remand so that the district court can reassess
 14 Aruda’s motion for compassionate release under the standard set forth here.”). Accordingly, this Court is
 15 free to determine any reason as extraordinary and compelling warranting compassionate release. “[T]he
 16 Court is not bound by the letter of [USSG §1B1.13] and may exercise its discretion to find extraordinary
 17 and compelling reasons warranting a sentence reduction even where [USSG §1B1.13] does not literally
 18 apply.” *United States v. Murry*, No. 1:15-cr-00153, 2021 U.S. Dist. LEXIS 38121, *15, 2021 WL
 19 795451 (S.D. Ind. Mar. 2, 2021) (Barker, J.) (granting compassionate release to drug and firearms
 20 offender sentenced to 100 months where defendant was required to care for minor child). According to
 21 the U.S. Sentencing Commission itself, in those circuits such as the Ninth that have found that §1B1.13
 22 does not apply to offender-filed motions, “district courts in these circuits may independently identify
 23 “extraordinary and compelling reasons” under section 3582(c)(1)(A).” U.S. Sentencing Comm’n,
 24 *Compassionate Release: The Impact of the First Step Act and COVID-19 Pandemic 2* (Mar. 2022),
 25 available at [https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220310_compassionate-release.pdf)
 26 [publications/2022/20220310_compassionate-release.pdf](https://www.ussc.gov/sites/default/files/pdf/research-and-publications/research-publications/2022/20220310_compassionate-release.pdf).

27 _____
 28 ⁴ Statement of Michael E. Horowitz, Inspector General, U.S. Dept. of Justice before the U.S. Sentencing Commission at 3 (Feb. 17, 2016), available at <https://www.ussc.gov/sites/default/files/pdf/amendment-process/public-hearings-and-meetings/20160217/IG.pdf>.

III. EXTRAORDINARY AND COMPELLING REASONS WARRANTING RELIEF

A. *The Pandemic*

As this Court is well aware, for the past two years, we have remained in the midst of a global pandemic caused by a novel coronavirus. *See, e.g.,* Thomas R. Frieden, former Dir. of the CDC, The Atlantic, *COVID-19 Is Out of Control. What Can We Do About It?* (Nov. 13, 2020) (“The coronavirus is growing out of control. Deaths will likely increase to 2,000 people a day before the end of the year, and **the virus will be with us for much of 2021 and possibly longer.**”) (Emphasis added), <https://www.theatlantic.com/ideas/archive/2020/11/covid-19-is-out-of-control-what-can-we-do/617097/> (last visited Nov. 15, 2020). Indeed, that prediction has unfortunately borne out all too well as COVID-19 case were peaking at nearly **four million cases per day** worldwide in January of this year and are still averaging well over a million per day as of the instant filing and increasing.⁵ In the United States alone, cases were exceeding over a million per day in January of this year and are still averaging over 25,000 per day as of the instant filing.⁶

Less than one-third of the population has been fully vaccinated (two doses plus a booster) as of the instant filing.⁷ Indeed, “there is widespread consensus among scientists and public health experts that the herd immunity threshold is not attainable — at least not in the foreseeable future, and perhaps not ever. Instead, they are coming to the conclusion that rather than making a long-promised exit, the virus will most likely become a manageable threat that will continue to circulate in the United States for years to come.”⁸

While many of those infected by SARS-Cov-2—the coronavirus that causes COVID-19—are asymptomatic, a large portion of those that develop COVID-19 likely will suffer life-long damage to their internal organs.

⁵ *See* Worldometer, *COVID-19 Coronavirus Pandemic*, <https://www.worldometers.info/coronavirus/#countries> (last visited Apr. 2, 2022).

⁶ *See* CDC, *Trends in Number of COVID-19 Cases and Deaths in the US Reported to CDC, by State/Territory*, at https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths (last visited Apr. 2, 2022).

⁷ *See* CDC, *Trends in Number of COVID-19 Vaccinations in the US*, at <https://covid.cdc.gov/covid-data-tracker/#vaccination-trends> (last visited Apr. 2, 2022).

⁸ Apoorva Mandavilli, NY Times, “Reaching ‘Herd Immunity’ Is Unlikely in the U.S., Experts Now Believe,” May 3, 2021, updated May 11, 2021, <https://www.nytimes.com/2021/05/03/health/covid-herd-immunity-vaccine.html>.

Recent clinical evidence indicates that in persons who suffer severe symptoms, the virus may also cause damage to organs such as the heart, the liver, and the kidneys, as well as to organ systems such as the blood and immune systems. ***This damage is so extensive and severe that it may be enduring.*** Among other things, patients who suffer severe symptoms from COVID-19 end up having damage to the walls and air sacs of their lungs, leaving debris in the lungs and causing the walls of lung capillaries to thicken so that they are less able to transfer oxygen going forward. Indeed, studies of some recovered patients in China and Hong Kong indicate a declined lung function of 20% to 30% after recovery.

Ruderman v. Kolutwenzew, No. 20-cv-2082, 2020 U.S. Dist. LEXIS 83163, *5-6 (C.D. Ill. May 12, 2020) (emphasis added; citations omitted).⁹

More alarmingly, the mortality rate of COVID-19 is at least 10 times greater than seasonal flu.¹⁰ In that regard, “[a] new study . . . found that on average, those who died from COVID-19 ***lost more than a decade of their life to the disease.***”¹¹ While the virus has spread quickly within the United States, it is estimated to spread nearly four times more quickly within prisons.¹² According to the New York Times, “[i]n federal facilities, at least 39 percent of prisoners are known to have been infected. The true count is most likely is higher because of a dearth of testing, but the findings align with reports from The Marshall Project and the Associated Press, U.C.L.A. Law and The COVID Prison Project that track Covid-19 in prisons. The virus has caused misery and loss in many places, but its destructive power has been felt intensely among the incarcerated, who have been infected at rates several times higher than

⁹ See also Kathryn Krawczyk, *The Week, Even Mild Coronavirus Cases Can Cause Lasting Cardiovascular Damage, Study Shows* (July 28, 2020) (reporting on “a recent study of 100 recovered coronavirus patients reveals 78 of them now have ***lasting cardiovascular damage*** even though a vast majority of them had mild cases of COVID-19 in the first place”) (emphasis added), <https://theweek.com/speedreads/927908/even-mild-coronavirus-cases-cause-lasting-cardiovascular-damage-study-shows>.

¹⁰ See Jake Ellison, *UW News, COVID-19: UW Study Reports ‘Staggering’ Death Rate in US Among Those Infected Who Show Symptoms*, (May 18, 2020), <https://www.washington.edu/news/2020/05/18/covid-19-uw-study-reports-staggering-death-rate-in-us-among-those-infected-who-show-symptoms/>.

¹¹ Joseph Guzman, *The Hill, New Study Finds Coronavirus Can Cut Life Span by 10 Years or More*, (May 11, 2020) (emphasis added), <https://thehill.com/changing-america/well-being/longevity/497097-those-who-died-from-covid-19-lost-more-than-a-decade-of>.

¹² See Lisa B. Puglisi, M.D., et al., *Estimation of COVID-19 Basic Reproduction Ration in a Large Urban Jail in the United States*, 53 Ann. Epidemiol. 103-105 (Jan. 2021) (estimating the basic reproduction rate (“R₀”) at 8.44 within jails and prisons), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7480336/>; Joe Hilton, et al., *Estimation of country-level basic reproductive ratios for novel Coronavirus (SARS-CoV-2/COVID-19) using synthetic contact matrices*, 16(7) PLoS Comput. Biol. (July 2020) (estimating U.S. R₀ at 2.22 to 2.47), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7363110/>.

those of their surrounding communities.”¹³ In fact, as discussed in more detail below, COVID-19 appears to be perhaps the deadliest event in the history of the BOP.

The Omicron, BA.2 and XE Variants

The Omicron Variant is a new and “ominous” variant of SARS-CoV-2.¹⁴ The World Health Organization and the CDC have listed it as a Variant of Concern.¹⁵ In the words of Kent Sepkowitz, a physician and infection control expert at Memorial Sloan Kettering Cancer Center in New York, Omicron is a “game changer.”¹⁶ First spotted in South Africa toward the end of November 2021, it quickly spread throughout the world including within the United States.¹⁷

The Omicron Variant spreads at least twice as fast as the Delta Variant,¹⁸ the previous variant of concern, which had been the predominant variant within the United States before overtaken by Omicron.¹⁹ “New data from South Africa and Europe hint that Omicron cases are poised to explode in the U.S., where the vast majority of the population isn’t well protected against infection.”²⁰ In fact, “[t]op federal health officials warned in a [recent] briefing . . . that the omicron variant is rapidly spreading in the United States and could peak in a massive wave of infections as soon as January [2022].”²¹ Those predictions were borne out all too well.

¹³ Eddie Burkhalter, et al., *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System* (Apr. 10, 2021), <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>.

¹⁴ Gretchen Vogel, *COVID-19 Reinfection Study from South Africa Yields Ominous Data About Omicron*, *Science*, Dec. 4, 2021, <https://www.economist.com/briefing/2021/12/04/omicron-looks-ominous-how-bad-is-it-likely-to-be>.

¹⁵ World Health Organization, *Update on Omicron*, Nov. 28, 2021, <https://www.who.int/news/item/28-11-2021-update-on-omicron>

¹⁶ Kent Sepkowitz, *Omicron is a Game-Changer for Covid-19 Vaccines*, CNN, Dec. 24, 2021, <https://www.cnn.com/2021/12/24/opinions/omicron-and-covid-19-vaccines-sepkowitz/index.html>.

¹⁷ *Tracking COVID-19 Variant Omicron*, BNO News, last visited Dec. 8, 2021, <https://bnonews.com/index.php/2021/11/omicron-tracker/>

¹⁸ Apoorva Mandavilli, *Omicron Variant Spreading Twice as Quickly as Delta in South Africa*, NY Times, Dec. 3, 2021, <https://www.nytimes.com/2021/12/03/health/coronavirus-omicron-vaccines-contagiousness.html>.

¹⁹ Emily Anthes, *Delta, As Expected, is Now the Dominant Virus Variant in the U.S., the C.D.C. Estimates*, NY Times, July 14, 2021, <https://www.nytimes.com/2021/07/07/health/delta-variant-cdc.html>.

²⁰ Caitlyn Owens, *Biden Official Warns: COVID Explosion Imminent*, Axios, Dec. 14, 2021, <https://www.axios.com/omicron-coronavirus-cases-europe-us-c85be94d-8edf-4d61-9f05-de924bff6760.html>.

²¹ Lena H. Sun, et al., *Omicron spreading rapidly in U.S. and could bring punishing wave as*
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1 The Omicron Variant increases the chances of reinfection three-fold.²² What is currently
 2 unknown is whether the Omicron Variant is even more virulent. However, if hospitalization rates out of
 3 South Africa are any indication, it is.²³ Even if Omicron is less severe than the Delta Variant, as Dr.
 4 Anthony Fauci, the head of the U.S. National Institute of Allergy and Infectious Diseases points out,
 5 “even if you have a diminution in severity, if you have a much larger number of individual cases [due to
 6 increased transmissibility], the fact that you have so many more cases might actually obviate the effect
 7 of it being less severe.”²⁴

8 In addition to being far more transmissible and at least as virulent, there also are indications that
 9 the Omicron Variant largely evades immunity brought by a previous infection.²⁵ Moreover, “[t]he
 10 omicron variant . . . will probably evade — or at least severely diminish — many forms of the main tool
 11 physicians have [to fight its infection], known as monoclonal antibodies, according to recent laboratory
 12 studies.”²⁶ Likewise, vaccines will struggle to protect against this variant.²⁷

13 This is so because of the sheer number of mutations on the virus. Whereas Delta had 10 or 12
 14 mutations, Omicron is thought to have more than 50.²⁸ At least three shots are now required to provide
 15

16 *soon as January, CDC warns*, Wash. Post, Dec. 14, 2021,
 17 <https://www.washingtonpost.com/health/2021/12/14/omicron-us-spread/>.

18 ²² *Reinfections Three Times More Likely with Omicron: S. African Research*, AFP, Dec. 2, 2021,
 19 [https://www.france24.com/en/live-news/20211202-reinfections-three-times-more-likely-with-omicron-](https://www.france24.com/en/live-news/20211202-reinfections-three-times-more-likely-with-omicron-s-african-research)
 20 [s-african-research](https://www.france24.com/en/live-news/20211202-reinfections-three-times-more-likely-with-omicron-s-african-research)

21 ²³ Alexander Tin, *South Africa Investigates "Sharp Increase" in Hospitalized Children with*
 22 *COVID*, CBS News, Dec. 3, 2021, [https://www.cbsnews.com/news/omicron-variant-children-south-](https://www.cbsnews.com/news/omicron-variant-children-south-africa/)
 23 [africa/](https://www.cbsnews.com/news/omicron-variant-children-south-africa/)

24 ²⁴ David Knowles, *Fauci: 'Dangerous' to Assume Omicron's Apparent Mildness Means the End*
 25 *of the Pandemic is in Sight*, Yahoo News, Dec. 22, 2021, [https://news.yahoo.com/fauci-dangerous-to-](https://news.yahoo.com/fauci-dangerous-to-assume-omicrons-apparent-mildness-means-the-end-of-the-pandemic-is-in-sight-215540152.html)
 26 [assume-omicrons-apparent-mildness-means-the-end-of-the-pandemic-is-in-sight-215540152.html](https://news.yahoo.com/fauci-dangerous-to-assume-omicrons-apparent-mildness-means-the-end-of-the-pandemic-is-in-sight-215540152.html).

27 ²⁵ *Study: Omicron could be more transmissible due to sharing genetic material with common*
 28 *cold*, Yahoo News, Dec. 4, 2021, [https://news.yahoo.com/study-omicron-could-more-transmissible-](https://news.yahoo.com/study-omicron-could-more-transmissible-205059149.html)
 29 [205059149.html](https://news.yahoo.com/study-omicron-could-more-transmissible-205059149.html).

30 ²⁶ Carolyn Y. Johnson, *Pfizer's Anti-Covid Pill Prevents Severe Illness and Should Work against*
 31 *Omicron, Company Says*, Wash. Post, Dec. 14, 2021,
 32 <https://www.washingtonpost.com/health/2021/12/14/does-pfizer-covid-pill-paxlovid-work/>.

33 ²⁷ *Moderna CEO Says Vaccines Likely Less Effective Against Omicron*, Reuters, Nov. 30, 2021,
 34 [https://www.reuters.com/business/healthcare-pharmaceuticals/moderna-ceo-says-vaccines-likely-less-](https://www.reuters.com/business/healthcare-pharmaceuticals/moderna-ceo-says-vaccines-likely-less-effective-against-omicron-ft-2021-11-30/)
 35 [effective-against-omicron-ft-2021-11-30/](https://www.reuters.com/business/healthcare-pharmaceuticals/moderna-ceo-says-vaccines-likely-less-effective-against-omicron-ft-2021-11-30/).

36 ²⁸ *SARS-CoV-2 Omicron variant*, Wikipedia, [https://en.wikipedia.org/wiki/SARS-CoV-](https://en.wikipedia.org/wiki/SARS-CoV-2_Omicron_variant)
 37 [2_Omicron_variant](https://en.wikipedia.org/wiki/SARS-CoV-2_Omicron_variant) (visited Dec. 5, 2021).

sufficient immunity;²⁹ four in those over 50.³⁰ According to a recent study out of Israel, even a double-dose vaccination coupled with a booster shot will provide no more than “*four times lower*” efficacy against Omicron “than the neutralization ability against Delta. . . . [W]e [also] don’t know if this will decrease with time and we’re working on that.”³¹ At least one widely available vaccine—Johnson & Johnson—provides no protection at all against Omicron.³² In fact, “after two doses of an mRNA vaccine from Pfizer/BioNTech or Moderna (MRNA.O), efficacy against symptomatic infection from Omicron is only about 30%, down from about 87% versus Delta. . . . *Protection against symptomatic infection is ‘essentially eliminated’ for individuals vaccinated more than four months earlier.* Boosters restore protection to about 48%.”³³

Thus, it was not surprising that within a mere month of its discovery in South Africa, Omicron became the dominant variant of SARS-CoV-2 throughout the United States.³⁴ The first confirmed death from Omicron was reported on December 21, 2021. “The man, who tested positive for the omicron variant before his death . . . had previously been infected with the coronavirus and had underlying health conditions that made him particularly vulnerable.”³⁵

According to a declaration recently filed in a class action against the U.S. Immigration and Customs Enforcement agency on behalf of detainees, Dr. Eric Feigl-Ding, a Senior Fellow at the

²⁹ Ludwig Berger & Michael Erman, *Pfizer, BioNTech Vaccine Neutralises Omicron with Three Shots*, Reuters, Dec. 8, 2021, <https://www.reuters.com/business/healthcare-pharmaceuticals/biontech-pfizer-say-test-shows-3-doses-vaccine-neutralise-omicron-2021-12-08/>.

³⁰ See CDC, Media Statement, *CDC Recommends Additional Boosters for Certain Individuals*, at <https://www.cdc.gov/media/releases/2022/s0328-covid-19-boosters.html>.

³¹ Nathan Jeffay, *Israeli Study Finds 2 Pfizer Shots Fail to Neutralize Omicron, but Booster Effective*, The Times of Israel, Dec. 12, 2021, <https://www.timesofisrael.com/israeli-study-finds-2-pfizer-shots-fail-to-neutralize-omicron-but-booster-effective/>.

³² Antony Sguazzin, *J&J Shot Loses Antibody Protection Against Omicron in Study*, Bloomberg, Dec. 15, 2021, <https://www.bloombergquint.com/coronavirus-outbreak/j-j-shot-shows-no-neutralization-against-omicron-in-lab-study>

³³ Nancy Lapid, *Vaccines Appear Weak at Blocking Omicron, Better Against Severe Disease*, Reuters, Dec. 14, 2021 (emphasis added), <https://www.reuters.com/business/healthcare-pharmaceuticals/vaccines-appear-weak-blocking-omicron-infection-shots-may-reduce-long-covid-2021-12-13/>.

³⁴ Mike Stobbe, *Omicron Sweeps Across Nation, Now 73% of New US COVID Cases*, AP, Dec. 21, 2021, <https://apnews.com/article/omicron-majority-us-cases-833001ef99862bd6ac17935f65c896cf>.

³⁵ Annabelle Timsit and Lateshia Beachum, *Unvaccinated Houston Man’s Death May be First Attributed to Omicron in U.S.*, Wash. Post, Dec. 21, 2021, <https://www.washingtonpost.com/nation/2021/12/21/us-omicron-coronavirus-death-first-reported/>.

1 Federation of American Scientists and *inter alia* member of the World Health Organization (“WHO”) and United Nations’ (“UN”) COVID-19 Mortality Committee, states that “[d]ue to the highly
2 transmissible Omicron variant, case numbers, hospitalizations, and deaths due to COVID-19 have been
3 high and are likely to increase with the recent emergence of the BA.2 sublineage of Omicron and the
4 likelihood of future variants.”³⁶

5 As Dr. Feigl-Ding further explains, “[t]he recently-identified BA.2 sublineage of Omicron is
6 significantly more infectious than the BA.1 sublineage of Omicron, and seems to be even more severe.
7 In addition, studies suggest that infection with Omicron does not protect individuals from future
8 reinfection. In addition to the immediate risk posed by the BA.2 sublineage, each new infection provides
9 the COVID-19 virus another opportunity to mutate and therefore produce even more transmissible and
10 dangerous future variants.”³⁷

11 As Dr. Feigl-Ding also states, “[o]ver the course of the pandemic, higher case and death rates
12 have been observed in prisons than in the general population. For the Omicron variant, too, the Rt
13 [rate of transmission] has been significantly high in carceral settings.”³⁸ “Not only is the BA.2
14 sublineage of Omicron more transmissible, it is also linked to worse health consequences. In countries
15 like Denmark where the BA.2 sublineage is dominant, excess deaths caused by the virus are spiking. A
16 recent study out of Japan which tested different variants on hamsters demonstrates that ‘[t]he viral RNA
17 load in the lung periphery and histopathological disorders of BA.2 were more severe than those of BA.1
18 and even B.1.1.’ The study raises serious concerns about the BA.2 sublineage, as it concluded that the
19 ‘data suggest[s] the possibility that BA.2 would be the most concerned variant to global health’ and
20 ‘propose that BA.2 should be recognised as a unique variant of concern, and this SARS-CoV-2 variant
21 should be monitored in depth.’”³⁹

22 As Dr. Feigl-Ding thus rightly observes, “[t]he Omicron wave is far from over. Although
23 nationally cases are for now trending downward, the emergence of the even more transmissible BA.2
24

25 ³⁶ See *Miguel Escalante, et al. v. U.S. Immigration and Customs Enforcement, et al.*, 1:22-cv-
26 00541-RJL (D.D.C. March 1, 2022) (Doc 2-6.), attached as Ex. 3 (Declaration of Dr. Eric Feigl-Ding,
Sc.D.).

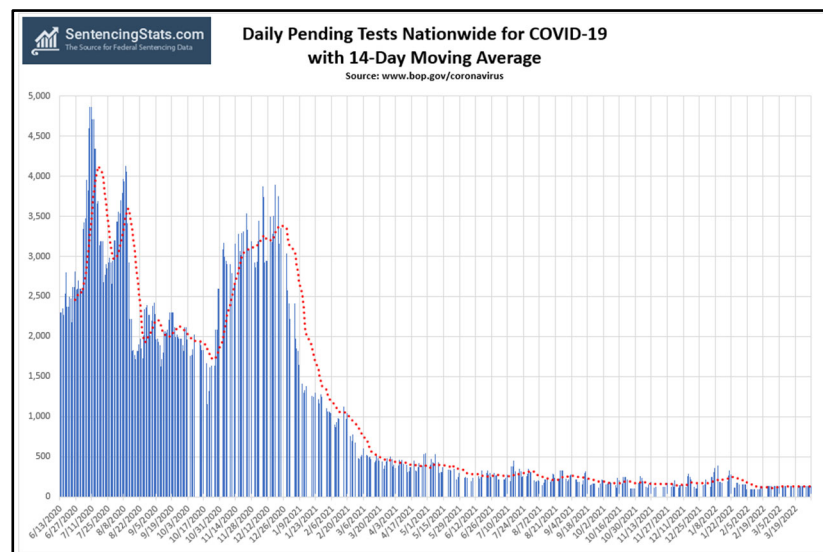
27 ³⁷ *Id.* at 2 (footnotes omitted).

28 ³⁸ *Id.* at 3 (emphasis added; footnotes omitted).

³⁹ *Id.* at 8 (footnotes omitted).

sublineage as well as the greater likelihood of reinfection after infection with Omicron—in comparison to reinfection after infection with Delta—show that **the serious threats posed by Omicron and COVID-19 is ongoing.**⁴⁰ Indeed, on March 29, 2022, the World Health Organization announced the presence of the XE recombinant subvariant, which is a combination of the BA.1 and BA.2 variants of Omicron.⁴¹ It is thought to be about 10% more transmissible than even the already highly transmissible BA.2 subvariant.

In light of the above, it is very disconcerting that the BOP's testing regime remains lower than at any time since the onset of the pandemic, as indicated in the graph below. Indeed, the BOP has been reporting exactly 136 pending tests since February 16, 2022, thereby suggesting that **no active testing is taking place.** This makes the BOP effectively blind to Omicron, which is especially problematic given that Omicron can also easily evade detection by the rapid tests used by the BOP.⁴²



Exacerbating the BOP's vulnerability to COVID-19 is the fact that it likely does not have enough vaccine on hand to vaccinate any unvaccinated inmates and provide booster shots to all remaining inmates. That the BOP does not even report the number of booster shots it has administered

⁴⁰ *Id.* at 4 (emphasis added).

⁴¹ See World Health Organization, *COVID-19 Weekly Epidemiological Update*, Mar. 29, 2022, <https://www.who.int/publications/m/item/weekly-epidemiological-update-on-covid-19---29-march-2022>.

⁴² See Hilary Brueck and Shyanne Gal, *Rapid Tests Do Not Always Detect Omicron — Here's How to Know for Sure If You've Got COVID-19 or Not*, BusinessInsider, Dec. 23, 2021, <https://www.businessinsider.com/how-to-trust-rapid-covid-test-result-2021-12>.

1 to inmates suggests the BOP has lost all visibility on the vaccination status of the inmate population as a
 2 whole.⁴³ **Furthermore, on March 29, 2022, the CDC recommended that those 50 years of age or**
 3 **older receive a fourth booster.**⁴⁴ Approximately 20% of the current BOP inmate population is at least
 4 50 years of age.⁴⁵

5 This renders the entire inmate population, staff and surrounding community exposed because the
 6 efficacy of prior vaccinations is now known to be wearing off.⁴⁶ Hence, again, the need for boosters.⁴⁷
 7 As the BOP notes in its COVID-19 Vaccine Guidance, “[i]nmates who are not moderately to severely
 8 immunocompromised and who received the Pfizer-BioNTech COVID-19 vaccine as their primary 2-
 9 dose vaccination series should be offered a booster dose *at least 6 months after the second dose*.”⁴⁸ The
 10 BOP, however, is simply incapable of fully vaccinating enough inmates quickly enough to adequately
 11 protect inmates, staff, and surrounding communities from the ravages of COVID-19.

12 Even if the BOP could fully and timely vaccinate all inmates as well as administer boosters,
 13 vaccines alone do not prevent the spread of the of the virus.

14 [V]accines can mitigate the more dangerous symptoms of COVID-19
 15 (including long term complications, hospitalizations, ICU admissions, and
 16 death). . . . The CDC has . . . found that “COVID-19 vaccination reduces
 17 the risk of COVID-19 and its potentially severe complications [and] data
 18 suggest that vaccination may make symptoms less severe in people who are
 19 vaccinated but still get COVID-19.”. . .

18 [B]oth the unvaccinated and vaccinated can nevertheless “acquire and
 19 spread” the SARS-CoV-2 virus. Unlike certain sterilizing vaccines (such as
 20 the small pox vaccine at issue in *Jacobson v. Massachusetts*, 197 U.S. 11,
 21 25 S. Ct. 358, 49 L. Ed. 643 (1905)), the vaccines for COVID-19 are, by
 22 design, non-sterilizing. As such, they do not kill the underlying virus like

21 ⁴³ See BOP, *COVID-19 Coronavirus*, “Coronavirus Vaccine Implementation,” (“*The figures*
 22 *below do not include any additional booster shots given.*”) (Emphasis in original), at
<https://www.bop.gov/coronavirus/>.

23 ⁴⁴ See CDC, Media Statement, *CDC Recommends Additional Boosters for Certain Individuals*, at
<https://www.cdc.gov/media/releases/2022/s0328-covid-19-boosters.html>.

24 ⁴⁵ See BOP, *Inmate Age*, https://www.bop.gov/about/statistics/statistics_inmate_age.jsp.

25 ⁴⁶ Maggie Fox, *Studies Confirm Waning Immunity from Pfizer's Covid-19 Vaccine*, CNN, Oct. 7,
 2021, <https://www.cnn.com/2021/10/06/health/pfizer-vaccine-waning-immunity/index.html>.

26 ⁴⁷ Robert Towey, *NIH Director Urges Vaccinated Americans to Get Covid Booster Shots to*
 27 *Curb Breakthrough Infections Over Holidays*, CNBC, Nov. 9, 2021,
<https://www.cnbc.com/2021/11/09/nih-director-urges-americans-to-get-covid-boosters-to-prevent-breakthrough-infections.html>

28 ⁴⁸ *Federal Bureau of Prisons Clinical Guidance* at 1, Oct. 13, 2021,
https://www.bop.gov/resources/pdfs/covid_19_vaccine_guidance_v14_0_2021.pdf.

some traditional vaccines (i.e., they cannot clear and prevent an infection from taking hold), and thus, the vaccines for COVID-19 cannot affirmatively preclude vaccinated persons from either contracting or transmitting the SARS-CoV-2 virus. Indeed, asymptomatic transmission by both vaccinated and unvaccinated persons may account for more than half of all transmission. *See, e.g.,* S.V. Subramanian and Akhil Kumar, *Increases in COVID-19 are unrelated to levels of vaccination across 68 countries and 2947 counties in the United States* (Sept. 9, 2021), available https://www.ncbi.nlm.nih.gov/pmc/articles/PMC8481107/pdf/10654_2021_Article_808.pdf (last visited Dec. 6, 2021) (finding that “[t]here also appears to be no significant signaling of COVID-19 cases decreasing with higher percentages of population fully vaccinated.”). In view of these developments, the CDC updated its masking policy recommendation to cover all persons regardless of vaccination status, as both groups are fully capable of virus transmission.

Halgren v. City of Naperville, No. 21-cv-05039, 2021 U.S. Dist. LEXIS 241777, *9-12 (N.D. Ill.) (footnotes omitted).

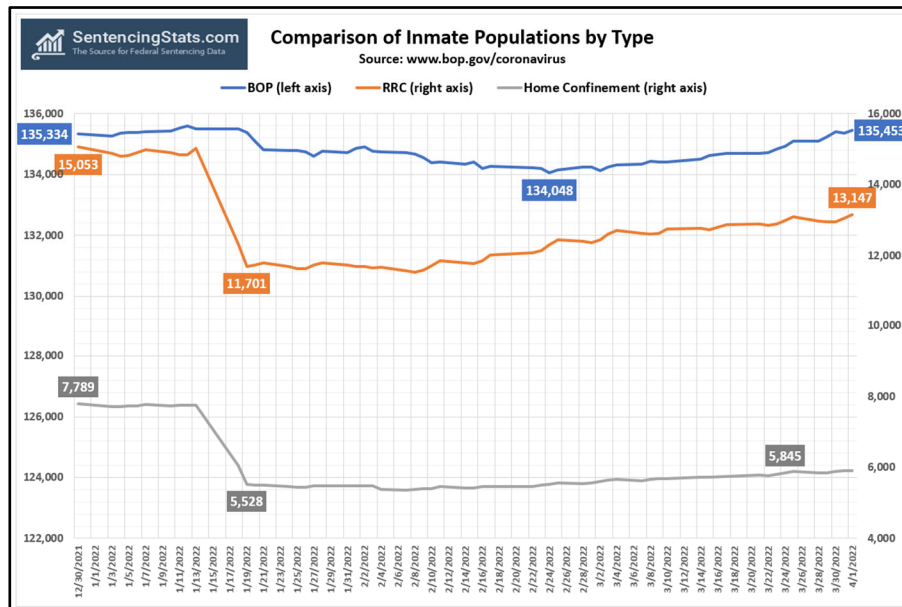
Of course, there are other prophylactic measures the BOP can take to minimize the risk of transmission, in particular reducing the number of inmates. The BOP can achieve this either by transferring an inmate to home confinement under its CARES Act authority,⁴⁹ or moving an inmate’s sentencing judge for compassionate release.⁵⁰ But like its underwhelming efforts to timely vaccinate the inmate population, the BOP has failed to transfer an appreciable number of inmates to RRCs or home confinement and has only moved for compassionate release on behalf of a mere handful of inmates.

The graph below illustrates that there are now more inmates in BOP custody than at the beginning of the year. And this despite the fact that a few thousand inmates were transferred to RRCs and home confinement in mid-January as the result of the BOP finally awarding First Step Act credits to inmates.⁵¹ But that appears to have been a one-time event and did not resulting in any significant, lasting reduction in the BOP inmate population.

⁴⁹ *See* Attorney General Barr’s memoranda issued on March 25, 2020, and April 3, 2020, https://www.bop.gov/coronavirus/docs/bop_memo_home_confinement_april3.pdf; Assistant Director for Correctional Programs Division Andre Matevousian’s memorandum issued on April 13, 2021, https://www.fd.org/sites/default/files/news/2021.4.13_-_bop_home_confinement_cares_memo.pdf.

⁵⁰ *See* Program Statement 5050.50, *Compassionate Release/Reduction in Sentence: Procedures for Implementation of 18 U.S.C. §§ 3582(c)(1)(A) and 4205(g)*.

⁵¹ *See* Walter Pavlo, Forbes, *Bureau of Prisons Begins Implementing First Step Act with Release Of Thousands In Custody*, Jan. 22, 2022, <https://www.forbes.com/sites/walterpavlo/2022/01/22/bureau-of-prisons-begins-implementing-first-step-act-with-release-of-thousands-in-custody/>.

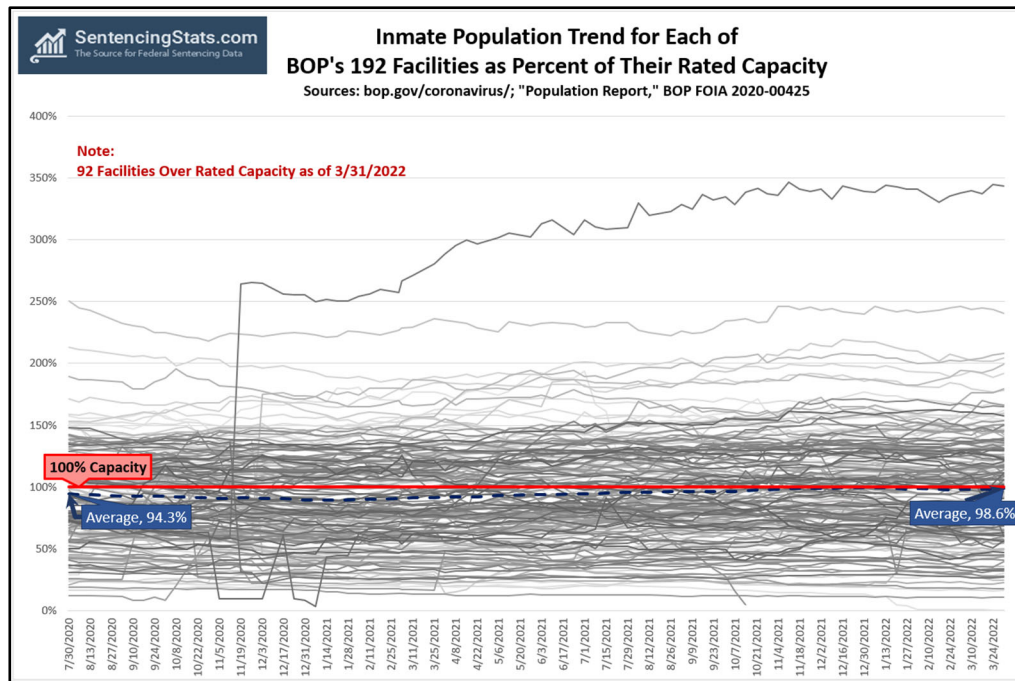


As far as moving a sentencing judge for compassionate release on behalf of an inmate, according to the U.S. Sentencing Commission, from January 1, 2020 through June 30, 2021, inmates brought 20,565 motions for compassionate release of which 3,608 (17.5%) were granted.⁵² Of those that were granted, **only 32** (0.9% of the 3,608) were brought by the BOP.⁵³ While the Commission does not report how many motions for compassionate release brought by the BOP were denied, it is not unreasonable to assume that those 32 motions constituted the entirety of all motions brought by the BOP on behalf of inmates. Thus, of 20,565 motions for compassionate release brought during the course of the pandemic through June 2021, only 0.2% (32 of 20,565) were brought by the BOP.

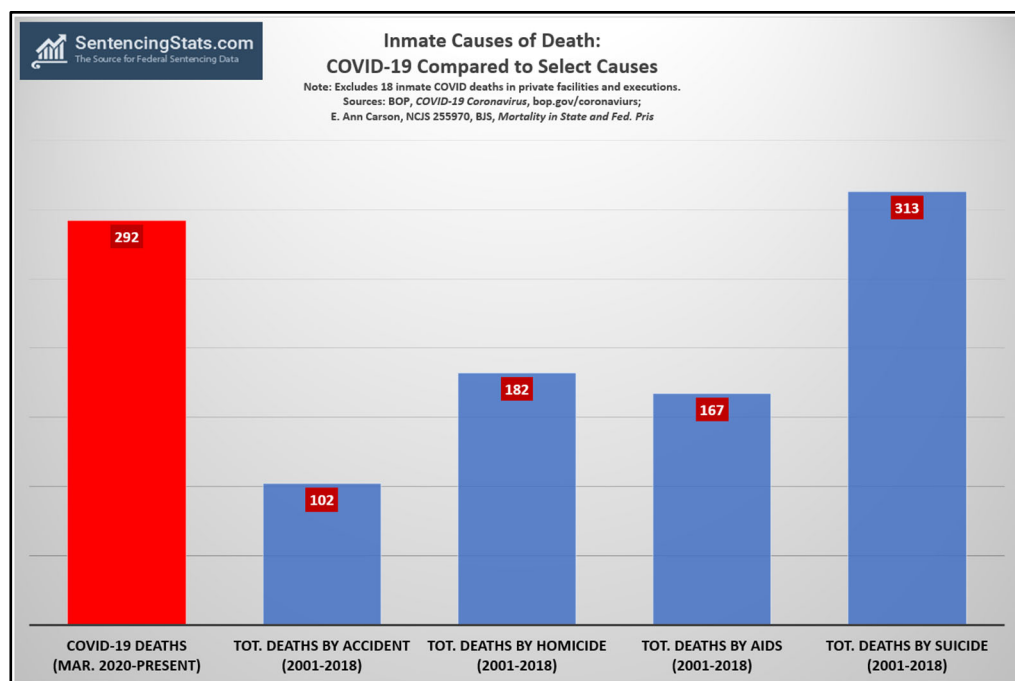
This is particularly disconcerting given that, as represented below, at least 92 of the BOP's 192 facilities remain over their rated capacities—and have for most of the pandemic. Moreover, the inmate population has grown from 94.3% of the average institutional capacity to nearly 100% during the course of the pandemic.

⁵² See U.S. Sentencing Commission, *Compassionate Release Data Report* tbl. 1 (Sept. 2021), <https://www.ussc.gov/sites/default/files/pdf/research-and-publications/federal-sentencing-statistics/compassionate-release/20210928-Compassionate-Release.pdf>.

⁵³ See *id.* at tbl. 4.

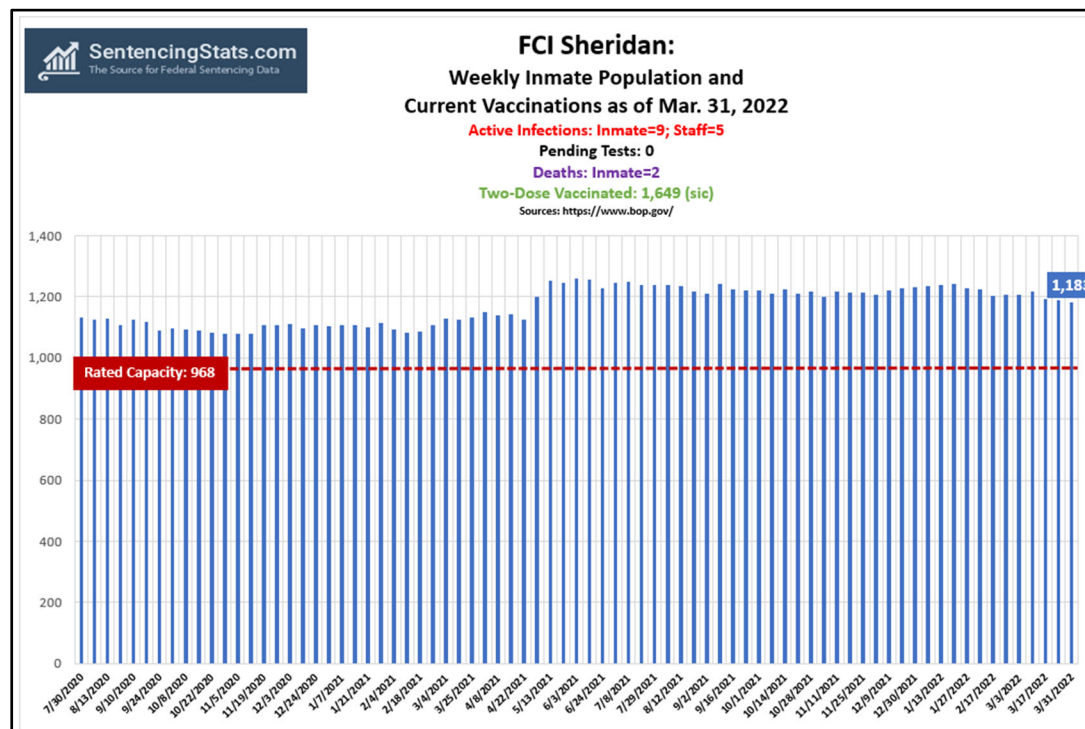


Thus, even these alternatives to vaccination for fighting the spread of the virus are not being deployed in any significant fashion to offset the over-crowded conditions within the BOP, which necessarily contributes to the fast-growing threat of COVID-19 to the BOP's inmates, staff, and surrounding communities. This is particularly troubling given that COVID-19 has already killed at least 292 inmates in just two years whereas it took AIDS 18 years to kill just 167 inmates as illustrated in the chart below.



B. *FCI Sheridan*

Mr. Anwar currently is housed at FCI Sheridan, an institution only at Operational Level 1 “Minimal Modifications,” but whose population has remained well-above its rated capacity for over the last 18 months and is now at a near record level as reflected in the following chart.

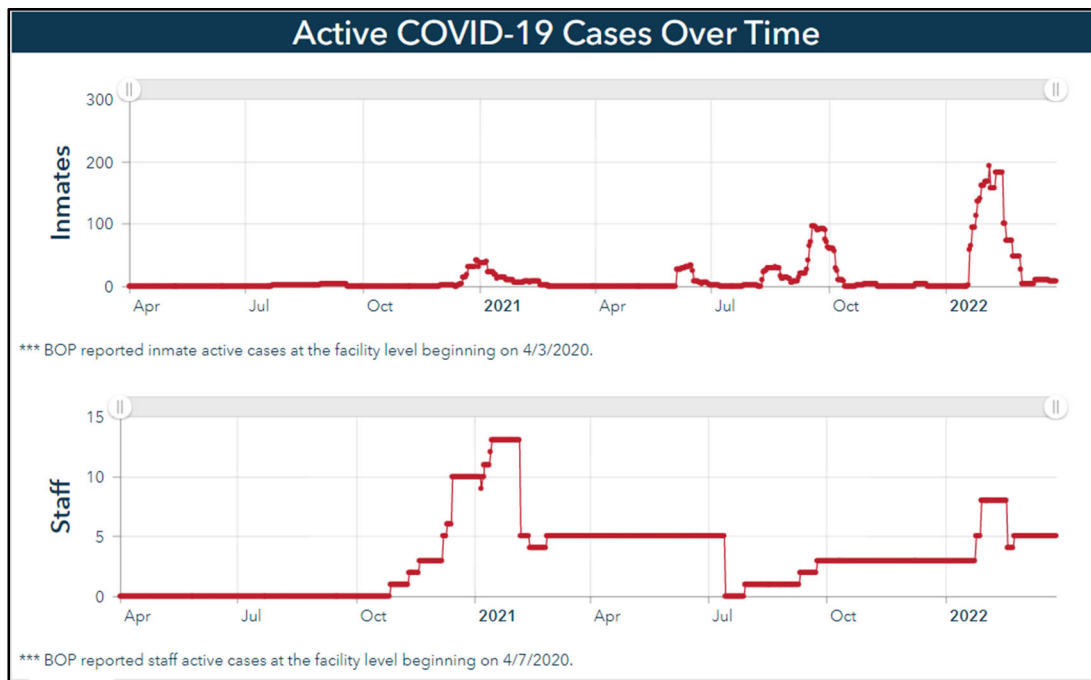


Oddly the BOP claims at least 1,649 inmates have been vaccinated at that facility while also reporting only 1,183 currently residing there, an obvious impossibility. Thus, the actual number of vaccinated inmates is unknown, and, as noted earlier, the number who have received booster shots is not even reported. Even assuming all inmates (and staff) have been timely and fully vaccinated, **there still are at least nine inmates with active infections and five staff**. As there are zero tests pending, in all likelihood there are far more inmates (and staff) actively infected as “BOP generally relies on inmates to self-report their COVID-19 symptoms in order to be tested” who do not always report when they are symptomatic “for fear of being quarantined or isolated.”⁵⁴

FCI Sheridan, is, in short, a viral powder keg.

⁵⁴ GAO, *BOP Could Further Enhance its COVID19 Response by Capturing and Incorporating Lessons Learned* 23 (July 2021), <https://www.gao.gov/assets/gao-21-502.pdf>.

As the trend chart below from the Department of Justice's Office of Inspector General illustrates, FCI Sheridan is just coming down from a record outbreak—an outbreak that occurred despite the fact the majority of inmates were ostensibly vaccinated at the time.⁵⁵



This is particularly alarming in light of a study by the CDC of a notable outbreak at FCI Texarkana last summer. So concerning was this outbreak, that the CDC sent a special team to investigate. “During July 2021, a COVID-19 outbreak involving the Delta variant was identified in a federal prison in Texas, infecting 172 of 233 (74%) incarcerated persons in two housing units. The Federal Bureau of Prisons (BOP) partnered with CDC to investigate.”⁵⁶ The team observed “the potential for SARS-CoV-2 Delta variant outbreaks **in congregate settings** including correctional and detention facilities, even among resident populations with high vaccination coverage.”⁵⁷ Indeed, there were a “high number of infections in vaccinated persons.”⁵⁸ Accordingly, the fact that vaccination did not prevent infection “underscore[d] the importance of implementing and maintaining multiple COVID-

⁵⁵ See U.S. Dep’t of Justice, Ofc. of Insp. Gen., *Pandemic Response Oversight--Dashboards of COVID-19 Cases*, <https://oig.justice.gov/coronavirus> (last visited on Jan. 25, 2022).

⁵⁶ Liesl M. Hagan, MPH, et al., “Outbreak of SARS-CoV-2 B.1.617.2 (Delta) Variant Infections Among Incarcerated Persons in a Federal Prison — Texas, July–August 2021,” CDC, MMWR, September 24, 2021 / 70(38);1349–1354, at <https://www.cdc.gov/mmwr/volumes/70/wr/mm7038e3.htm>.

⁵⁷ *Id.* (emphasis added).

⁵⁸ *Id.*

19 prevention strategies in settings where physical distancing is challenging, even when vaccination coverage is high.”⁵⁹

What was quite troubling, therefore, was the team’s finding that despite the high vaccination rates in inmates, the same was not the case with staff: “***BOP records indicate that nearly two thirds of staff members in this prison were unvaccinated***, and at least nine were infected during this outbreak. In addition, during the 2 weeks before the outbreak, community transmission was high.”⁶⁰ This is extremely problematic since, obviously, “SARS-CoV-2 can be introduced into correctional facility populations and back into the community through daily entry and exit of staff members and interfacility transfers of incarcerated persons. . . . [T]he identification of a single viral lineage among all sequenced specimens in this outbreak suggests a single introduction of the virus into the prison. Bidirectional connections between correctional facilities and communities highlight the importance of high vaccination coverage among both staff members and incarcerated persons.”⁶¹

Also alarming, Yamhill County, Oregon—the county surrounding FCI Sheridan—still has a “high” daily case count despite the recent decrease.⁶² At least 1 in 7 residents have been infected since the beginning of the pandemic.⁶³ Moreover, Williamette Valley Medical Center, the closest medical facility to FCI Sheridan, currently is at 105% of its capacity and has zero ICU beds available.⁶⁴

C. Mr. Anwar Has Served Sufficient Time

On October 1, 2020, after a two-day sentencing hearing, this Court calculated Mr. Anwar’s Total Offense Level under USSG §2B1.1 to be 40 (inclusive of a one-level upward departure) and his Criminal History Category to be I for a sentence range of 292 to 365 months. *See* Sentencing Trans. at 297-299 (Doc. 281; PageID 7086-7088). This Court then imposed a sentence of 340 months, three years’ supervised release, and \$1,890,550.10 in restitution. *See id.*

⁵⁹ *Id.*

⁶⁰ *Id.* (emphasis added).

⁶¹ *Id.* (footnotes omitted).

⁶² *See* “Tracking Coronavirus: Yamhill County, Ore.,” NY Times, updated Apr. 3, 2021, <https://www.nytimes.com/interactive/2021/us/yamhill-oregon-covid-cases.html>.

⁶³ *Id.*

⁶⁴ *Id.*

According to the BOP's online "Inmate Locator," Mr. Anwar's estimated release date is December 30, 2042. As of April 18, 2022, Mr. Anwar will have served 41 months imprisonment, which is equivalent to a sentence of over 48 months when factoring in the customary 15% reduction for Good Conduct Time credit. As Table 27 to the U.S. Sentencing Commission's *2020 Sourcebook on Federal Sentencing Statistics* reports, reproduced below, a 48-month sentence is longer than the median sentences in Criminal History Category I for Arson (30 months), Assault (18 months), Drug Trafficking (36 months), and even Manslaughter (37 months). It is eight times greater than the median sentence for fraud offenses (6 months).

By any measure, Mr. Anwar has already served a significant term of imprisonment greater than the majority of sentences imposed on violent offenders and drug traffickers.

Table 27
SENTENCE LENGTH IN EACH CRIMINAL HISTORY CATEGORY BY TYPE OF CRIME¹
Fiscal Year 2021

TYPE OF CRIME	TOTAL			CRIMINAL HISTORY CATEGORY									V			VI		
	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median	N	Mean	Median	N
TOTAL	48	24	56,931	36	12	23,103	35	13	7,978	44	22	9,954	56	36	6,164	70	48	3,845
Administration of Justice	13	8	509	10	5	298	10	11	58	15	12	44	17	14	47	20	18	27
Antitrust	3	3	6	3	3	6	--	--	0	--	--	0	--	--	0	--	--	0
Arson	63	48	79	67	30	33	34	36	9	67	54	16	60	51	10	45	30	3
Assault	58	36	657	30	18	243	42	27	70	66	44	106	74	51	89	76	70	51
Bribery/Corruption	20	12	247	19	12	222	20	11	8	20	12	12	--	--	2	--	--	0
Burglary/Trespass	23	14	62	10	7	22	12	12	7	36	24	9	21	18	5	54	28	8
Child Pornography	108	90	1,215	92	78	879	131	120	102	149	121	141	153	135	55	187	180	26
Commercialized Vice	14	11	114	10	6	81	24	14	15	17	21	11	13	15	4	--	--	0
Drug Possession	1	0	274	1	0	173	1	0	28	0	0	21	0	0	14	2	0	19
Drug Trafficking	74	60	17,599	50	36	7,674	65	57	2,064	77	60	2,664	92	80	1,641	107	96	1,071
Environmental	2	0	161	2	0	135	2	0	11	3	0	10	3	3	3	--	--	1
Extortion/Racketeering	25	15	116	21	8	78	12	12	7	33	30	16	17	12	5	--	--	2
Firearms	48	37	8,079	21	12	1,217	30	24	772	37	30	1,724	50	41	1,510	59	54	1,112
Food and Drug	9	1	45	8	1	41	28	12	3	--	--	1	--	--	0	--	--	0
Forgery/Counter/Copyright	16	12	137	9	4	56	7	4	11	13	9	21	22	25	10	22	18	18
Fraud/Theft/Embezzlement	20	12	4,512	17	6	3,211	21	12	378	24	16	396	32	24	178	39	30	116
Immigration	13	8	16,911	6	4	5,505	9	7	3,856	13	12	3,958	22	18	2,031	29	24	991
Individual Rights	34	6	65	36	4	61	--	--	1	--	--	2	--	--	0	--	--	1
Kidnapping	166	123	92	151	110	34	177	163	15	150	114	16	165	121	14	239	288	5
Manslaughter	69	59	56	61	37	31	87	53	6	70	70	11	70	80	5	108	84	3
Money Laundering	57	30	1,028	44	24	761	78	58	100	77	59	78	137	84	35	110	60	17
Murder	244	231	257	212	184	88	280	240	31	258	240	43	252	240	34	269	240	23
National Defense	37	27	215	26	23	174	48	44	16	46	43	6	48	44	4	--	--	0
Obscenity/Other Sex Offenses	22	18	297	23	12	34	16	12	29	18	15	76	20	18	63	28	26	48
Prison Offenses	11	8	529	4	0	22	5	1	10	5	4	133	9	7	117	12	12	90
Robbery	104	90	1,300	82	71	349	89	78	154	99	92	241	114	90	187	117	101	120
Sexual Abuse	211	180	1,062	202	180	676	201	180	108	233	228	109	233	210	55	263	240	70
Stalking/Harassing	26	18	219	15	12	113	20	18	27	33	30	21	31	27	22	36	33	17
Tax	14	12	421	12	8	347	17	14	37	22	18	28	45	27	5	--	--	2
Other	2	0	667	1	0	539	2	0	45	5	0	40	11	6	19	8	4	4

¹ Of the 57,287 cases, 356 cases were excluded due to one of the following reasons: missing Criminal History Category (355) or missing or indeterminable sentencing information (1). Sentences of 470 months or greater (including life) and probation were included in the sentence average computations as 470 months and zero months, respectively. The information in this table includes conditions of confinement as described in USSG §5C1.1. Descriptions of variables used in this table are provided in Appendix A.

SOURCE: U.S. Sentencing Commission, 2021 Datafile, USSCFY21.

D. Mr. Anwar is at Risk of Severe Illness or Death from COVID-19

According to recent communications from Mr. Anwar with the undersigned, he initially refused to be vaccinated because information at the time did not affirmatively indicate the vaccine was safe for cancer patients. However, **Mr. Anwar has submitted a several written “cop-outs” to be vaccinated since at least January 4, 2022, for either the Moderna or Pfizer vaccines, but has yet to receive the vaccine.**

Mr. Anwar has only been provided with a cloth mask that he has had to wash repeatedly as FCI Sheridan apparently is out of additional masks. Masking is not enforced at the institution with respect to either inmates or staff. Mr. Anwar is currently housed in Building 3A, which has 120 inmates of which roughly 60 inmates are rotated in from other units and facilities every two weeks. He is housed in a two-man cell locked down 13 to 14 hours each day due to the pandemic. Thus, given the constant flow of inmates, Mr. Anwar is necessarily prone to becoming infected. The conditions Mr. Anwar reports are independently corroborated by Dr. Stuart Grassian in his declaration in support of a class action brought by inmates against the Warden of FCI Sheridan.⁶⁵

Additionally, testing is barely being performed and infrequently so. Testing is only performed for new inmates who get transferred from different facilities. As long they are not symptomatic, these new inmates will be released into the general population within a few days, which hardly constitutes a sufficient quarantine time.

Mr. Anwar was last tested last year when he was severely ill with COVID-19, throwing up blood every day. He had blood clots in his arms and legs, which is not mentioned in his medical history despite several written cop-outs attesting to the same. Nor is the fact that he is allergic to Penicillin. If he is given penicillin, he will go into anaphylactic shock.

According to Dr. Thomas E. McNalley, a board-certified physician in adult and

⁶⁵ See *Stirling v. BOP, et al.*, 3:20-cv-00712-SB (D. Or. Aug. 13, 2021) (Declaration of Dr. Stuart Grassian) (Doc. 72-2), attached as Ex. 4.

1 pediatric physical medicine and rehabilitation, and in hospice and palliative medicine,
2 who is an associate professor of pediatrics at the University of California, San Francisco,
3 and former associate professor of rehabilitation medicine at the University of Washington,
4 Mr. Anwar suffers from papillary thyroid carcinoma, and Type 2 diabetes. *See* Ex. 2
5 (Medical Evaluation of Sami Anwar’s BOP Medical Records). Both are recognized CDC
6 risk factors.⁶⁶ Dr. McNalley also notes concern that Mr. Anwar remains unvaccinated
7 against COVID-19.

8 Because he is not fully vaccinated, Mr. Anwar “is at increased risk of having a
9 severe clinical course which could include long-term hospitalization, persistent damage to
10 vital organs including lungs, heart and brain (so-called “long covid”) and death because of
11 his underlying medical conditions.” *Id.* at 2.

12 Additionally, Dr. McNalley notes that “[t]here is evidence of Mr. Anwar not
13 receiving care in a timely fashion for a new diagnosis of cancer.” *Id.* at 3. As Dr. McNalley
14 details:

15 Mr. Anwar has experienced deleterious delays in care. He has had
16 throat swelling for over 2 years and had abnormalities noted on
17 CT scan in April of this year. It took another two months before
18 he received a biopsy. He was then seen by an oncologist 3 weeks
19 later. It took an additional 4 weeks after that before he saw an
20 ear, nose and throat specialist. As of this writing, I do not see any
21 documentation that he was ever evaluated by a thyroid surgical
22 specialist. The implications for his cancer recovery remain to be
23 seen—papillary thyroid cancer generally responds well to
24 treatment, if the type of thyroid cell involved is responsive to
25 treatment, or it is detected early and has not spread to other parts
26 of the body. Additionally, for a person with an anxiety disorder,
27 delays in the diagnosis and treatment of cancer could cause
28 particularly significant emotional trauma. It is a reasonable
medical conclusion that Mr. Anwar’s panic attack in April and the
emergency room evaluation in August are related to worries
about his health generally and his cancer diagnosis specifically.

⁶⁶ *See* <https://www.cdc.gov/coronavirus/2019-ncov/needextra-precautions/people-with-medical-conditions.html>.

1 Confined to his home, as opposed to living in an open-air dormitory, the chances of
 2 Mr. Anwar contracting COVID-19 are dramatically reduced. Furthermore, he will be able
 3 to continue his medical treatment outside the confines of the federal prison.

4 There is nothing to indicate that the BOP is even remotely equipped to provide
 5 adequate medical care to Mr. Anwar in a correctional environment that has had to
 6 dramatically reorganize its internal procedures during an unprecedented pandemic.
 7 Indeed, it has been well-documented that the BOP has not been able to provide adequate
 8 medical care even before the pandemic. As the Office of Inspector General has found,
 9 there is “limited institution staff and inadequate staff training that affect the BOP’s
 10 ability to address the needs of aging inmates. The physical infrastructure of BOP
 11 institutions also limits the availability of appropriate housing for aging inmates.”⁶⁷ In a
 12 separate report, “[t]he OIG found that recruitment and retention of medical professionals
 13 is a serious challenge for the BOP, in large part because the BOP competes with private
 14 employers that offer higher pay and benefits. We further found that the BOP has not
 15 proactively identified and addressed its medical recruiting challenges in a systemic way.
 16 Rather, it has attempted in an uncoordinated fashion to react to local factors influencing
 17 medical recruiting at individual institutions.”⁶⁸ The only thing that has changed since
 18 these reports were issued is that matters have gotten demonstrably worse due to the
 19 pandemic.

20 As federal courts recognized early on in the pandemic,

21 It is apparent that we should not be adding to the prison
 22 population during the COVID-19 pandemic if it can be avoided.
 23 Several recent court rulings have explained the health risks—to
 24 inmates, guards, and the community at large—created by large
 25 prison populations. Complications have already begun inside
 26 federal prisons—inmates and prison employees are starting to
 test positive for the virus, quarantines are being instituted, visits
 from outsiders have been suspended, and inmate movement is
 being restricted even more than usual. To avoid adding to the

27 ⁶⁷ Ofc. of Insp. Gen., Dep’t of Justice, *The Impact of an Aging Inmate Population on the Federal*
Bureau of Prisons i (Rev. Feb. 2016), available at <https://oig.justice.gov/reports/2015/e1505.pdf>.

28 ⁶⁸ Ofc. of Insp. Gen., Dep’t of Justice, *Review of the Federal Bureau of Prisons’ Medical*
Staffing Challenges i-ii (Mar. 2016), available at <https://oig.justice.gov/reports/2016/e1602.pdf>.

1 complications and creating unnecessary health risks, offenders
 2 who are on release and scheduled to surrender to the Bureau of
 3 Prisons in the coming months should, absent extraordinary
 circumstances, have their surrender dates extended until this
 public health crisis has passed.

4 *United States v. Powell*, No. 19-cr-00061, 2020 U.S. Dist. LEXIS 62077, *1-*2, 2020 WL
 5 1540485 (N.D. Cal. Mar. 27, 2020) (Illston, J.); *United States v. Huang*, No. 19-cr-00110,
 6 2020 U.S. Dist. LEXIS 58355, *1-*2, 2020 WL 1540483 (N.D. Cal. Mar. 27, 2020) (Illston,
 7 J.); *United States v. Garlock*, No. 18-cr-00418, 2020 U.S. Dist. LEXIS 53747, *1-*2, 2020
 8 WL 1439980 (N.D. Cal. Mar. 25, 2020) (Chhabria, J.). That remains the case today.

9 According to Mr. Anwar, he was recently hospitalized for being unresponsive
 10 related to vertigo and possibly syncope. The staff at FCI Sheridan did not appear to be
 11 properly trained how to handle such a situation and so began performing CPR without
 12 first securing and clearing his airway, checking and restoring breathing, and checking and
 13 maintaining circulation. At FCI Sheridan, there is no emergency medication other than
 14 an AED machine to shock the heart while performing CPR. The Problem is staff do not
 15 appear to know when to use the AEDA and under what conditions. Mr. Anwar could hear
 16 a nurse shouting “not another death on my shift! No Anwar stay with us Buddy! Anwar
 17 stay with us!”

18 Mr. Anwar had to be rushed to the local hospital where he was placed in the ER for
 19 hours. Hospital staff performed a contrast CT with Radioactive Iodine and tried to insert
 20 a catheter but were unsuccessful because Mr. Anwar’s whole body was in a tonic non-
 21 responsive condition. The neurologist and the ER doctor said they have not encountered a
 22 case like this before and most likely it was due to his cancer.

23 ***E. Mr. Anwar Presents No Current Danger to the Community***

24 Mr. Anwar is an older inmate with zero criminal history in significantly failing health. He has
 25 fully complied with his conditions of confinement. There simply is no evidence that he presents any
 26 danger to the community. Should this Court grant the instant motion, he will live at his home while
 27 continuing his medical therapy and seeking gainful employment under the supervision of this Court.
 28

F. Violent Offenders and Sex Offenders Have Received Compassionate Release

Finally, as serious as Mr. Anwar's conduct was, it does not preclude this Court from granting him compassionate release. Courts across the country have granted compassionate release to not only violent and sex offenders, but recidivists. *See, e.g., United States v. Raymonde*, No. 11-cr-000490, 2021 U.S. Dist. LEXIS 208092, 2021 WL 5014499 (D. Colo. Oct. 28, 2021) (granting compassionate release to violent recidivist in CHC VI who had been sentenced to 216 months but had served only 57% of sentence of imprisonment); *United States v. Jacques*, No. 16-20759, 2021 U.S. Dist. LEXIS 146709, 2021 WL 3422356 (E.D. Mich. Aug. 5, 2021) (granting compassionate release to sex offender sentenced to 96 months but who had only served 38 months); *United States v. Wheelock*, No. 13-136, 2021 U.S. Dist. LEXIS 99684, 2021 WL 2143136 (D. Minn. May 26, 2021) (granting compassionate release to sex offender sentenced to 180 months who had only served approximately 84 months); *United States v. Miller*, No. 17-cr-404, 2020 U.S. Dist. LEXIS 241244, 2020 WL 7641289 (N.D. Ill. Dec. 22, 2020) (granting compassionate release to child pornography offender sentenced to 84 months who had served 42 months); *United States v. Magnuson*, 15-cr-50095, 2020 U.S. Dist. LEXIS 233817, 2020 WL 7318109 (D.S.D. Dec. 11, 2020) (granting compassionate release to attempted child sex trafficker sentenced to 72 months who served only 54 months); *United States v. Fields*, No. 12-cr-20274, 2020 U.S. Dist. LEXIS 229692, 2020 WL 7225775 (E.D. Mich. Dec. 8, 2020) (granting compassionate release to armed career criminal sentenced to 180 months who had served 110 months).

At the very least, this Court should recommend to the BOP that it transfer Mr. Anwar to home confinement, which this Court has the authority to do. *See* 18 U.S.C. § 3621(b)(4). The Court may issue an order **recommending** Mr. Anwar's federal sentence be served on home confinement. Alternatively, the Court also has the authority to issue a Statement of Reasons (SOR) pursuant to 28 U.S.C. § 944(w). Indeed, the use of an SOR is often a preferred vehicle and better practice for communicating the Court's intent to the BOP. In particular, the USA Patriot Improvement and Reauthorization Act of 2005, Pub. L. 109-177, 120 Stat. 192 (2006), amended 28 U.S.C. § 994(w) to require that the reasons for the sentence imposed in every case be "stated on the written statement of reasons form issued by the Judicial Conference and approved by the United States Sentencing Commission." 28 U.S.C. § 994(2)(1)(B). Thereafter, the Judicial Conference issued, and the Sentencing Commission approved Form AE 245B,

1 which was revised in February 2016. Section 184 of the revised form provides in relevant part:

2 Additional Comments or Findings “comments or factual findings
3 concerning any information in the presentence report, including information
4 that the Federal Bureau of Prisons may rely on when it makes inmate
5 classification, designation, or programming decisions.”

6 Chapter VI of Publication 107, the U.S. Probation Monograph published by the Administrative
7 Office of the Courts, addresses the use of a criminal judgment’s statement of reasons section to convey
8 pertinent prison-related information to the BOP:

9 The Statement of Reasons, together with the presentence report, is relied
10 upon by staff at the Federal Bureau of Prisons to make inmate classification,
11 designation, and programming decision. Bureau staff look to the Statement
12 of Reasons for court findings – that differ from the tentative findings in
13 presentence reports – as they relate to controverted guideline applications
14 (e.g., specific offense characteristics or other adjustment) and nonguideline
15 related (e.g., prior history of sexual misconduct, escapes, violence,
16 immigration status, threats against government officials) issues.

17 Chapter VI continues, addressing the interplay between how information is provided to the BOP
18 via the Statement of Reasons: “Courts are encouraged to adopt procedures to ensure that the Statement
19 of Reasons is used to transmit all findings both guideline and non-guideline related – to the Bureau of
20 Prisons.”

21 **IV. CONCLUSION**

22 Mr. Anwar has now served a sufficient term of incarceration. His age and underlying, precarious
23 health conditions make him exceedingly susceptible to COVID-19 for which the BOP can neither
24 adequately protect him from nor treat. Furthermore, as the CDC’s study of FCI Texarkana unequivocally
25 demonstrated, any vaccination will only provide a temporary prophylactic at best and will not
26 necessarily prevent him from becoming ill or worse even assuming it has a sufficient supply, which it
27 does not. As Mr. Anwar poses no danger to the community, under these circumstances, he has served
28 long enough. *See, e.g., United States v. Holden*, No. 2:16-cr-9, 2020 U.S. Dist. LEXIS 205520, *4 (N.D.
Ga. Aug. 18, 2020) (granting compassionate release to career drug offender who suffered from several
medical ailments, “presents no danger to the community,” and where “the objectives set forth in §
3553(a)(2) can be adequately served and accomplished through the custodial sentence already served
and a four-year term of supervised release”).

1 Accordingly, Mr. Anwar respectfully prays that this honorable Court grant the instant motion to
2 allow his to begin to serve his term of supervised release, which already is conditioned on six months'
3 home confinement which this Court may extend.

4
5 Dated: April 4, 2022.

ALAN ELLIS

6
7 /s/ ALAN ELLIS

8 ALAN ELLIS

9
10 JEFFRY K. FINER

11 /s/ Jeffry K. Finer

12 JEFFRY K. FINER

13 Attorneys for Defendant
14 SAMI ANWAR
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CERTIFICATE OF SERVICE

I hereby certify that on April 4, 2022, the foregoing EMERGENCY MOTION FOR COMPASSIONATE RELEASE and MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT was filed electronically and a copy was served by mail on anyone unable to accept electronic filing. Notice of this filing will be sent by e-mail to all parties by operation of the Court's electronic filing system or by mail to anyone unable to accept electronic filing as indicated on the Notice of Electronic Filing. Parties may access this filing through the Court's CM/ECF System.

/s/Alan Ellis

ALAN ELLIS